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October 20, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of Hyperion Telecommunications, Inc. and KMC Telecom Inc.; CC Docket 97-208

Dear Secretary Caton:

Please find enclosed for filing in the above-referenced matter an original plus eleven copies, and a diskette formatted in WP 5.1 of the Comments of Hyperion Telecommunications, Inc. and KMC Telecom Inc. Also enclosed is an extra copy to file-stamp and return with the messenger.

Please note that the sealed envelope marked "Confidential Exhibit" and included with this filing contains a related exhibit that we request the Commission to withhold from public inspection, pursuant to 47 C.F.R. § 0.459. An official request for such confidential treatment is attached to the copies of the Exhibit.

Thank you for your attention to this matter. If you have any questions, please call me.

Sincerely,



Antony Richard Petrilla

Counsel for Hyperion Telecommunications, Inc. and
KMC Telecom Inc.

Enclosures

cc: Tricia Breckenridge
Greg Oden
Andrew D. Lipman, Esq.
Robert V. Zener, Esq.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

RECEIVED

OCT 20 1997

In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

)

Application by BellSouth

)

Corporation *et al.* for Provision of

)

CC Docket No. 97-208

In-Region, InterLATA Services in

)

South Carolina

)

COMMENTS OF
HYPERION TELECOMMUNICATIONS, INC. AND
KMC TELECOM INC.
IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR
INTERLATA AUTHORITY IN SOUTH CAROLINA

Hyperion Telecommunications, Inc. ("Hyperion") and KMC Telecom Inc. ("KMC"), through undersigned counsel, hereby submit their comments on the Section 271 application for in-region interLATA authority filed by BellSouth Corporation *et al.* ("BellSouth") on September 30, 1997.

BACKGROUND AND STATEMENT OF INTEREST

Hyperion is a diversified telecommunications company whose affiliates are providing or preparing to provide facilities-based local exchange service in twelve states. Within BellSouth's region, Hyperion affiliates are certificated as local exchange carriers in five states: Florida, Kentucky, Louisiana, Mississippi, and Tennessee. Hyperion affiliates presently have interconnection agreements with BellSouth in Florida, Kentucky and Tennessee. Hyperion has an immediate interest in helping the Commission properly evaluate BellSouth's compliance with the competitive checklist of Section 271 of the Communications Act of 1934 ("Act").

KMC is a competitive local exchange carrier, authorized to provide local exchange service in 17 states, including such BellSouth states as Alabama, Florida, Georgia, Louisiana,

and North Carolina. KMC currently provides local services on its own network, and also resells BellSouth local exchange service, in Alabama, Florida, Georgia, and Louisiana. In addition, KMC is starting the process to provide local exchange services over its own networks under development in Winston-Salem, Greensboro, and Hickory, North Carolina. KMC has a direct interest in ensuring that BellSouth meets its obligations under Section 271 of the Act.

INTRODUCTION

The comments of Hyperion and KMC demonstrate that BellSouth fails to satisfy the competitive checklist in two respects. BellSouth does not provide reciprocal compensation (as required by Section 271(c)(2)(B)(xiii)) or nondiscriminatory access to operations support systems ("OSSs") (as required by Sections 271(c)(2)(B)(ii) and (xiv)). To be more specific, BellSouth refuses to pay reciprocal compensation for traffic terminated to the Internet service provider end users of Hyperion and KMC (among other competitive local exchange carriers ("CLECs")). BellSouth's application also does not demonstrate that CLECs have nondiscriminatory access to BellSouth's OSS functions. BellSouth's application lacks data on average service installation intervals and, therefore, cannot refute the allegations in the attached declaration of Larry E. Miller that BellSouth's intervals for provisioning resold services to CLECs are discriminatory. In addition, BellSouth's Local Exchange Navigation System ("LENS") suffers from several infirmities set forth in Mr. Miller's declaration and discussed further in Section II.C of these comments.

ARGUMENT

I. BELLSOUTH'S APPLICATION FAILS THE COMPETITIVE CHECKLIST IN REGARD TO PROVIDING RECIPROCAL COMPENSATION

The competitive checklist requires Regional Bell Operating Companies ("RBOCs") requesting interLATA authority to provide "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." 47 U.S.C. § 271(c)(2)(B)(xiii). Section 252(d)(2) requires RBOCs to comply with section 251(b)(5), which in turn requires reciprocal compensation arrangements for transport and termination of "telecommunications." 47 U.S.C. §§ 251(b)(5) & 252(d)(2). BellSouth, following the lead of other RBOCs, has taken the position that it will not provide reciprocal compensation for local calls terminating with an information service provider ("ISP"), including Internet service providers. BellSouth Brief, at 52. But the obligation to pay reciprocal compensation for transport and termination of "telecommunications" contains no exception for calls to ISPs. Consequently, BellSouth's refusal to pay reciprocal compensation for such calls violates the competitive checklist.

Furthermore, BellSouth's interconnection agreements with Hyperion and KMC obligate BellSouth to pay reciprocal compensation on all traffic that meets certain parameters without regard to the identity of the called party. The Commission should not sustain BellSouth's attempt to evade these contractual obligations merely by referencing the identity of the called party.

BellSouth argues that in this proceeding its position is protected by the finding of the South Carolina Public Service Commission ("PSC") that it has complied with its reciprocal compensation obligation. BellSouth Brief at 52. But BellSouth did not announce its refusal to pay reciprocal compensation until August 12, 1997, in a letter sent to all competitive carriers two weeks *after* the PSC issued its decision. *See* Attachment A. The PSC's finding could not have been an endorsement of a position that BellSouth had not yet adopted. All the PSC found was

that BellSouth's reciprocal compensation rates are just and reasonable because they are within the FCC's proxy rates.¹¹ That finding has nothing to do with the issue of what type of traffic triggers reciprocal compensation obligations.

Moreover, Congress specifically conferred on this Commission, rather than state commissions, the jurisdiction to make a final determination of checklist compliance. Although this Commission must "consult" with state commissions under Section 271(d)(2)(B) of the Act, it alone — and not the South Carolina Commission — has the duty and authority to make the final decision. *Ameritech*, ¶ 285.¹² Thus, the Commission is not bound by South Carolina's findings.

BellSouth's position on reciprocal compensation also bears on the public interest issue. If CLECs cannot recover for transport and termination of ISP calls, they would face enormous, uncompensated costs, since the overwhelming majority of ISP traffic is incoming, and the overwhelming majority of the incoming traffic comes from BellSouth's customers. The result could well be to force CLECs out of the ISP market, giving BellSouth a *de facto* monopoly of this market and resulting in increased costs to ISPs and ultimately their customers. The result

¹¹ *Entry of BellSouth Telecommunications, Inc. into InterLATA Market*, Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 97-101-C, at 52 (S.C. P.S.C. July 31, 1997) (referring to *Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order on Arbitration, Docket No. 96-358-C, at 15 (S.C. P.S.C. March 10, 1997)).

¹² *In the matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, CC Docket 97-137 (rel. August 19, 1997) ("Ameritech").

would be totally at variance with the public interest that Congress has declared in preserving "the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." 47 U.S.C. § 230(b)(2).

II. BELLSOUTH'S APPLICATION DOES NOT DEMONSTRATE THAT BELLSOUTH PROVIDES NONDISCRIMINATORY ACCESS TO ITS OSS FUNCTIONS

To obtain Section 271 authority to offer in-region interexchange services, BellSouth must show that it provides "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" and that its "[t]elecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. §§ 271(c)(2)(B)(ii) & (xiv). In *Ameritech*, the Commission interpreted these sections also to include the "duty to provide nondiscriminatory access to OSS functions." *Ameritech*, ¶ 131. BellSouth's application attempts to demonstrate compliance with this duty, but falls short in several respects.

The declaration of Larry Miller (in Attachment B) explains how BellSouth discriminates against KMC in regard to providing access to OSS functions.^{3/} Mr. Miller details the ways in which BellSouth provides inferior service to purchasers of wholesale local services, such as

^{3/} While Mr. Miller's declaration concerns operations in Alabama, his observations are relevant to this proceeding because BellSouth operates its OSS functions on a region-wide basis. *Ameritech*, ¶ 156 ("any determinations regarding OSS made by state commissions in the Ameritech region may be relevant to our inquiry in this application because Ameritech provides access to OSS functions on a region-wide basis from a single point of contact."). BellSouth serves CLECs from its offices in either Birmingham, Alabama or Atlanta, Georgia. Affidavit of William N. Stacy, Performance Measures, ¶ 4. In fact, BellSouth has presented mostly region-wide data in its application. See generally *id.* The Commission therefore should find Mr. Miller's declaration to be on point.

KMC, and offers specific data showing the provisioning delays that KMC experiences. The data presented in BellSouth's application does little to refute this evidence. As shown below, BellSouth neglected to file comparative data on average installation intervals for retail and wholesale local services in their simple and complex forms.

A. BellSouth's Application Does Not Present Comparative Data on Average Installation Intervals for Retail and Wholesale POTS Services

Ameritech required applicants under Section 271 to submit comparative data on average installation intervals for both the applicant's retail POTS services and their wholesale analogue. *Ameritech*, ¶ 166. In other words, the data must compare the average time it takes for the applicant's retail customers to have service installed with the average time it takes for customers of resellers, using the applicant's wholesale services, to have service installed. BellSouth's application purports to present such data, but its claim breaks down under careful scrutiny.

BellSouth's application contains comparative data on two aspects of local service installation: (1) the percentage of due dates met for BellSouth and CLECs to have POTS service installed; and (2) a day-by-day break-down of the time intervals between issuance of a service order in BellSouth's Service Order Control System ("SOCS"), which occurs when a firm order commitment ("FOC") is assigned, and the due date for BellSouth and CLECs. Affidavit of William N. Stacy, Performance Measures, Exhibits WNS-1 & WNS-10. If CLEC local service requests ("LSRs") instantaneously resulted in the issuance of a service order in SOCS, as is the case for BellSouth,^{4/} the aforementioned data might help the Commission determine whether CLECs can obtain service installation in the same amount of time as BellSouth. However, as

^{4/} Declaration of Miller, ¶ 13.

Mr. Miller's declaration explains, BellSouth does not process CLEC LSRs in anywhere near the time that it processes its own LSRs. Declaration of Miller, ¶ 13. KMC has trouble simply obtaining an acknowledgment from BellSouth that an LSR has been received, much less obtaining an FOC from BellSouth. *Id.*

As BellSouth concedes, its application lacks comparative data regarding the average interval between receipt of an LSR and issuance of a service order in SOCS for itself and CLECs. Affidavit of William N. Stacy, Performance Measures, ¶ 43 ("Provisioning Order Reject/Error Notice (not available at this time)"; "Provisioning Firm Order Confirmation (not available at this time)"). BellSouth's omission in this regard violates *Ameritech's* command that Section 271 applicants provide comparative data on the average interval required to render an FOC for the applicant and resellers of local service. *Ameritech*, ¶ 187. Indeed, the only evidence in the record on BellSouth's ability to issue an FOC to resellers is: (1) the data presented in Exhibit A of Mr. Miller's declaration, which indicates that the process can take more than several weeks; and (2) BellSouth's confidential Exhibit WNS-41, which shows BellSouth's FOC process to be plagued with errors, but tells the Commission nothing about the time interval between an LSR and an FOC.^{5/} Declaration of Miller, Exhibit A; Affidavit of William N. Stacy, Performance Measures, Exhibit WNS-41.

Accordingly, BellSouth cannot claim to have met *Ameritech's* call for comparative data on the average installation interval. *Ameritech*, ¶ 166. Based on BellSouth's applications, the

^{5/} BellSouth attributes errors in the FOC process to CLECs, but provides no basis whatsoever for its assertion. Affidavit of William N. Stacy, Operating Support Systems, Exhibit WNS-41.

Commission would have no idea if CLECs had to wait an additional 10 days for BellSouth's OSS to render an FOC and issue a service order in SOCS. In this manner, BellSouth's data "mask[s]" discrimination that, according to Mr. Miller, competitors like KMC experience daily. *Ameritech*, ¶ 166; Declaration of Miller.

B. BellSouth's Application Does Not Include Comparative Data on Average Installation Intervals for Complex Local Services

BellSouth's application lacks comparative data of the *Ameritech* variety in regard to the average installation intervals for complex local services. For instance, the data in Exhibit WNS-1 explicitly apply only to POTS services. Furthermore, as noted above, BellSouth offers no data on the time interval to issue an FOC for any requested service.

BellSouth's omission of data on complex services is particularly troubling, given its admission that such services largely rely on manual OSS processes of the sort that the Commission condemned in *Ameritech*:

we find that Ameritech's reliance on manual processing is substantial and appears to cause a significant deterioration in Ameritech's performance as orders increase. Given that the problems currently faced by Ameritech generally have arisen from a limited number of orders for simple POTS resale service, we are concerned that the problems Ameritech is experiencing will multiply, as more competing carriers enter the marketplace and increase both the total number of orders and the number of orders involving more complex services.

Ameritech, ¶ 173. In failing to place data into the record of this proceeding on average installation intervals for complex services, BellSouth has done nothing to address the Commission's concern expressed in *Ameritech* that use of manual processes creates more serious problems as the volume of orders for complex services rises.

BellSouth argues that its OSS functions for complex services are nondiscriminatory because its own customers must deal with the same manual processes. Affidavit of William N. Stacy, Operating Support Systems, ¶ 64. However, BellSouth's failure to ground its assertion in solid comparative data takes much of the wind out of its sails. The Commission has no more assurance that OSS processes for complex services are nondiscriminatory than it had with regard to any of Ameritech's services.

C. Contrary to BellSouth's Assertions, the LENS Interface Is an Inadequate and Discriminatory OSS

BellSouth asserts that "CLECs are able to perform traditional OSS functions such as pre-ordering, ordering, provisioning, maintenance and repair, and billing 'in substantially the same time and manner' as BellSouth." BellSouth Brief, at 21. However, Mr. Miller's declaration explains that BellSouth's LENS interface, which is one of the two primary OSSs for CLEC use, is "inadequate and discriminatory." Miller Declaration, ¶ 14. Mr. Miller details four problems with LENS. First, it takes resellers ten minutes to establish dial-up access to LENS. *Id.*, at ¶ 15. By contrast, BellSouth's salespeople have "immediate access" to necessary OSS functions, so that customers may be served promptly. *Id.*

Second, there are "significant limitations" upon a reseller's ability to view customer service records ("CSRs") through LENS. *Id.*, at ¶ 16. Resellers must order large CSRs in hard-copy — a process that takes at least 48 hours. *Id.* Further, resellers lack the ability to view the CSRs of some of their own customers on LENS and hence cannot verify or discuss these

customers' service options on short notice.^{6/} *Id.* BellSouth's salespeople do not face such limitations on access to CSRs.

Third, LENS does not provide resellers with FOCs when it receives orders. *Id.*, at ¶ 17. Resellers suffer in two ways: (1) unlike BellSouth, they cannot advise customers of due dates for service installation while customers are on the initial telephone call requesting service; and (2) they do not know if BellSouth even has received orders properly for provisioning. *Id.* Moreover, with complex services, LENS cannot provide any sort of FOC. *Id.* BellSouth does so manually, in a process that Exhibit A of Mr. Miller's declaration demonstrates to be extremely untimely. *Id.*, at Exhibit A.

Lastly, LENS may be a step in the right direction, but at this point it is a baby step. As Mr. Miller notes, LENS is "an unstable, unpredictable software environment" that "crashes frequently during the work day" and that "seems to be in the development stages." *Id.*, at ¶ 18. Given the discriminatory tendencies of LENS that are discussed above, it would be highly premature for Commission to find LENS to be an acceptable OSS.

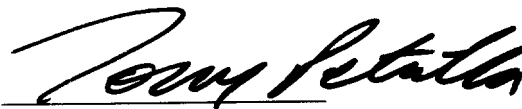
CONCLUSION

For the foregoing reasons, the Commission should find that BellSouth has failed to satisfy the competitive checklist because: (1) it does not provide reciprocal compensation; and

^{6/} In such a case, resellers would have to order the CSR and verify or discuss service options with the customer at a later date.

(2) it does not provide nondiscriminatory OSS functions for accessing unbundled network elements and resold services. *See* 47 U.S.C. §§ 271(c)(2)(B)(ii), (xiii), & (xiv).

Respectfully submitted,

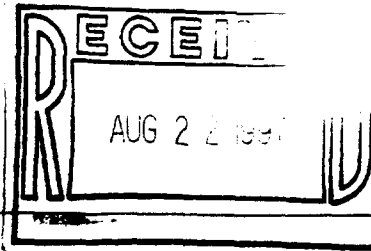
A handwritten signature in black ink, appearing to read "Robert V. Zener", written over a horizontal line.

Robert V. Zener
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Counsel for Hyperion Telecommunications,
Inc. and KMC Telecom Inc.

Dated: October 20, 1997

ATTACHMENT A



BELLSOUTH

BellSouth Telecommunications, Inc.
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Atlanta, Georgia 30375

404 927-7150
Fax 404 420-8291
Internet: Ernest.L.Bush
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Ernest L. Bush
Assistant Vice President -
Regulatory Policy & Planning

SN91081223

August 12, 1997

To: All Competitive Local Exchange Carriers
Subject: Enhanced Service Providers (ESPs) Traffic

The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor bill, local interconnection charges for traffic terminated to an ESP. Every reasonable effort will be made to insure that ESP traffic does not appear on our bills and such traffic should not appear on your bills to us. We will work with you on a going forward basis to improve the accuracy of our reciprocal billing processes. The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

On December 24, 1996, the Federal Communications Commission (FCC) released a Notice of Proposed Rule Making (NPRM) on interstate access charge reform and a Notice of Inquiry (NOI) on the treatment of interstate information service providers and the Internet, Docket Nos. 96-262 and 96-263. Among other matters, the NPRM and NOI addressed the information service provider's exemption from paying access charges and the usage of the public switched network by information service providers and internet access providers.

Traffic originated by and terminated to information service providers and internet access providers enjoys a unique status, especially call termination. Information service providers and internet access providers have historically been subject to an access charge exemption by the FCC which permits the use of basic local exchange telecommunications services as a substitute for switched access service. The FCC will address this exemption in the above-captioned proceedings. Until any such reform affecting information service providers and internet access providers is accomplished, traffic originated to and terminated by information service providers and internet access providers is exempt from access charges. This fact, however, does not make this interstate traffic "local", or subject it to reciprocal compensation agreements.

Please contact your Account Manager or Marc Cathey (205-977-3311) should you wish to discuss this issue further. For a name or address change to the distribution of this letter, contact Ethelyn Pugh at 205-977-1124.

Sincerely,

E. L. Bush

ATTACHMENT B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc., and)	CC Docket No. 97-208
BellSouth Long Distance, Inc., for)	
Provision of In-Region, InterLATA)	
Services in South Carolina)	

DECLARATION OF LARRY E. MILLER

Larry E. Miller declares that:

1. I am employed by KMC Telecom Inc. ("KMC") as City Project Planner. My office address is 994 Explorer Boulevard, Huntsville, Alabama 35806.

CREDENTIALS

2. I have worked in the telecommunications industry for nine years. I started out at NASA as a Data Telecommunications Technician in 1988. In that position, I installed and maintained NASA's local area network (which consisted of dedicated, Ethernet and Appletalk networks). In 1994, I became a Network Analyst in NASA's Wide-Area Network Management Center ("WANMC"). There, I installed and maintained the Program Support Communications Network, which is essentially NASA's wide-area network backbone for all of its operations. In 1996, I became the Lead Network Analyst for the WANMC, supervising approximately ten Network Analysts.

3. I started at KMC in July of 1997 as City Project Planner. My principal duty involves coordinating KMC customer orders with BellSouth's Local Carrier Service Center and Complex Resale Group.

INTRODUCTION

4. KMC is a certificated provider of local and long distance services in 17 states. KMC provides competitive access services using its own state-of-the-art fiber optic network in Huntsville, Alabama and resells the local exchange service of BellSouth Telecommunications, Inc. ("BellSouth") in Huntsville. As a new entrant in BellSouth's region, KMC has a very real interest in seeing that BellSouth meets all of the checklist requirements as a precondition to its obtaining authority to provide in-region long distance service. Once BellSouth receives interLATA authority, it has little incentive to cooperate with KMC and other local entrants in their efforts to bring competition to the local exchange market. Without BellSouth's full and active cooperation, competition in the local exchange market simply cannot and will not develop.

5. KMC is here to relate to the Commission its actual experience in attempting to provide competitive local exchange service in BellSouth's region. KMC's experiences make it clear that BellSouth at the present time does not have in place the systems or procedures necessary to allow the development of local exchange competition in even its most elementary form — the resale of BellSouth's own local exchange service.

BELLSOUTH'S PROVISIONING OF WHOLESALE LOCAL SERVICE

6. Entering the local exchange market on a facilities basis is a very difficult undertaking and involves countless steps, any and all of which can affect the ability of new entrants to provide competitive local exchange service. While perhaps less apparent, even the resale of BellSouth's local exchange service requires that a number of systems and procedures be put in place, be tested, perfected and made available in a commercially meaningful way. While KMC has an interconnection agreement with BellSouth, its experience to date indicates that

BellSouth does not have the necessary systems, procedures or personnel in place to meet its obligations under the interconnection agreement or to permit the development of local exchange competition.

7. In addition to the need to have all of these systems and people in place, it is also necessary that those involved have "gotten the message." KMC is their customer as well as their competitor, particularly in the resale situation. We will be buying unbundled elements and resell their services. Unfortunately to date our experience has been that rather than taking a positive can-do approach, dealing with BellSouth personnel has been an exercise in frustration. The transition to competition would be difficult in any circumstances, if BellSouth personnel are unwilling participants and act in that way, it won't work.

8. After entering into and having the Commission approve a resale agreement with BellSouth, KMC in theory may begin to market local exchange service. In order to market the service, however, KMC must be in a position to advise the customer that KMC can promptly and accurately fulfill the customer's service order and then provide service in a manner at least equivalent to that provided by BellSouth. With BellSouth's existing systems, which serve all CLECs from BellSouth's offices in Birmingham, AL (in the case of KMC) or Atlanta, GA, it is not possible today to undertake large scale marketing of local exchange service, even on a resale basis. BellSouth simply has not put in place or has not perfected the systems necessary so that KMC can obtain an order from a customer, submit that order, provide the customer with notice of initial service, provide service and accurately bill for the service.

9. The Commission should not underestimate the impact of these defects. Not only does it mean that KMC must minimize its initial marketing efforts, but to the extent that these

flaws exist, KMC risks its reputation for service and quality. As a new entrant seeking to obtain business from a 100 year monopoly, the customer is unlikely to provide KMC a second chance if it cannot provide the service requested in the time promised. The fact that the service is in fact BellSouth's, or that the delays or errors are BellSouth's is neither understood, appreciated or of relevance to the customer. All the customer knows and sees is that it had previously received service from BellSouth and did not have these problems. Having switched to KMC, it has problems with its phone service. Simply put, if KMC cannot deliver the goods in a timely manner, it cannot possibly compete.

10. KMC has experienced problems at every stage of the process. KMC has had orders lost, returned as in error, backlogged, and filled improperly. BellSouth has failed to advise KMC of whether it has received an order, when it expected to fill the order, and when it in fact has filled the order. KMC has then been improperly billed for service by being over-billed for certain services and by being billed for services never ordered or received. Further, BellSouth has continued sending bills to its former customers after they have switched to KMC.

11. I will described BellSouth's flawed provisioning of wholesale local service more specifically. First, while KMC can order simple services over BellSouth's Local Exchange Navigation System ("LENS") interface, it cannot do so for complex services, which form a significant portion of what services KMC orders. BellSouth's present system requires that KMC manually prepare an order form for each line in a complex service. Each order form is limited to 2 lines. This means to the extent KMC obtains an order from a small to medium size business customer with from 5 to 30 lines, KMC would be required to complete 3 to 15 order forms manually for this one order! When I raised this issue with BellSouth, I was told they simply

didn't have any other form to address the issue. By comparison, a BellSouth salesman would have on line access to electronic ordering.

12. Having manually completed the order forms for complex services, we have to fax them to BellSouth. It is our understanding that once received by BellSouth, a BellSouth employee keys the order into the BellSouth system. This, of course, presents another opportunity for human error to occur in placing the order. A problem a BellSouth sales person would not face.

13. When a BellSouth salesperson places an order, he or she receives a Firm Order Commitment ("FOC") within a matter of minutes. This FOC allows the salesman to advise the customer when its new service will commence. KMC has in a number of cases not received an FOC from BellSouth and in fact has frequently not even received a confirmation of the receipt of an order. To deal with this uncertainty, we have a procedure where we call BellSouth whenever placing an order to make sure that it was received. Unfortunately, my efforts cannot change the fact that, even when KMC has received a FOC from BellSouth providing a due date, BellSouth has consistently missed that date. I would be very surprised to learn that BellSouth treated its own customers in this manner.

14. Even for simple orders, BellSouth's LENS interface is inadequate and discriminatory.

15. First, in its present form, LENS is unsuitable for typical commercial use. It generally takes ten minutes to connect to LENS through dial-up access. No customer is going to wait on the line for that length of time. BellSouth's sales people, on the other hand, seem to have immediate access within a few seconds of a customer's call.

16. Second, while LENS has given resellers greater on-line access to customer service records ("CSRs"), it has significant limitations. When CSRs are large, LENS will not display them, and I must file a manual request with BellSouth. Usually, manual CSRs are not available for at least 48 hours. Additionally, I cannot view the CSRs of some customers after they switch to KMC. Thus, I am not in the same position as BellSouth's sales people who can view any CSR on-line.

17. Third, although LENS allows me to view an FOC 24 hours after I place a simple service order, this feature is inapplicable to complex services. As the data in Exhibit A show, it takes several days to receive an FOC for a complex service. Moreover, I do not enjoy the convenience of a BellSouth salesperson who receives FOCs for service orders while on the telephone with the customer. Unlike that salesperson, I have no way of immediately confirming that BellSouth's systems have processed my order.

18. Finally, LENS currently is an unstable, unpredictable software environment. It crashes frequently during the work day and, rather than being a finished product, it seems to be in the development stages. As a result, LENS has yielded some strange results. For instance, at one time it reported a service order as canceled even though BellSouth actually provisioned service for the particular customer. BellSouth had no explanation for this glitch. I believe that LENS requires much more development (perhaps to remedy the problems I discuss above) before it is ready to act as the primary interface between resellers and BellSouth. In its present form, LENS is inadequate and discriminatory.

19. Whatever the reason, it is clear to me that BellSouth does not have the systems or procedures in place to make even the simplest form of local competition available on a

commercially viable basis. Regardless of who is at fault (if there is fault), it is simply clear that competition does not and cannot exist in BellSouth's region at this time.

**EXHIBIT A DATA ON KMC'S EXPERIENCE
PURCHASING WHOLESALE LOCAL SERVICE**

20. Exhibit A contains data tracking every line that KMC's Alabama operations have provided to customers either by reselling BellSouth's wholesale local service or by using KMC's network in Huntsville.^{1/} Exhibit A has ten fields, labeled A through J. Field A lists the tracking number for a line. Field B is the date when KMC placed the order with BellSouth.^{2/} Field C is a KMC internal tracking number. Field D is the date on which KMC received an FOC from BellSouth. Field E is the date on which BellSouth completed the order. Field F is a KMC internal tracking number. Field G lists the difference between the FOC date and the completion date. Field H lists the type of service ordered. Fields I and J indicate whether the service was complex or simple, respectively.

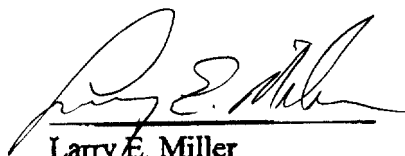
21. As is apparent from the data, KMC has experienced delays both in receiving FOCs and in having BellSouth complete the provisioning of lines. For instance, many FOC dates occur after the completion date because BellSouth returned the FOC only upon my prompting and after it had provisioned service.

^{1/} Please note that I labeled lines over KMC's own network as "On Net." Although these lines are not relevant to the inquiry in this proceeding, they appear on Exhibit A because it is an actual print-out of KMC's operating records.

^{2/} I should note that on line 2 of Exhibit A, KMC's order date is several days after the FOC date. This anomaly occurred as part of a paperwork mix-up between KMC and BellSouth, where we placed an undated order prior to the FOC date and used a later status date as the date of the order in Field A.

22. I highly doubt that BellSouth treats its own customers in this manner.

Pursuant to 47 C.F.R. § 1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: October 17, 1997.

A handwritten signature in black ink, appearing to read "Larry E. Miller", written over a horizontal line.

Larry E. Miller
KMC City Project Planner

CERTIFICATE OF SERVICE

I, Stan Mares, hereby certify that on the 20th day of October, 1997, copies of the foregoing Comments of Hyperion Telecommunications, Inc. and KMC Telecom, Inc., CC Docket 97-208 were served upon the following parties named on the attached list, via hand delivery or U.S. Postal delivery.

A handwritten signature in black ink, appearing to read "Stan Mares", is written over a horizontal line.

Stan Mares

(Original + 11 copies + Disk)

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